

103D CONGRESS
1ST SESSION

S. 1195

To amend the Federal Water Pollution Control Act to further the protection of wetlands, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 1 (legislative day, JUNE 30), 1993

Mrs. BOXER introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Federal Water Pollution Control Act to further the protection of wetlands, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Wetlands Reform Act of 1993”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AMENDMENTS TO THE FEDERAL WATER POLLUTION CONTROL ACT

Sec. 101. Statement of policy.

Sec. 102. Expansion of scope of permit program.

Sec. 103. Definition of fill material.

- Sec. 104. Permit review by resource agencies.
- Sec. 105. Clarification of general permit program.
- Sec. 106. Reports on effects of permit program on wetlands.
- Sec. 107. Expedited permit review.
- Sec. 108. Avoidance and minimization of adverse effects.
- Sec. 109. Exemptions for agriculture and other activities.
- Sec. 110. Citizen suits amendments.

TITLE II—IMPROVED WETLANDS PERMITTING; REVISIONS TO WETLANDS DELINEATION PROCEDURES

- Sec. 201. Improvement of administration of wetlands permitting.
- Sec. 202. Revisions to Federal wetlands delineation procedures.

TITLE III—WETLANDS RESTORATION PROGRAM

- Sec. 301. Wetlands restoration pilot program.
- Sec. 302. Sense of Congress concerning wetlands reserve program.

TITLE IV—TAX INCENTIVES FOR WETLANDS CONSERVATION

- Sec. 401. Wetlands stewardship trusts.
- Sec. 402. Tax treatment of donations of wetlands.
- Sec. 403. Exclusion from gross income for amounts received from compatible uses of wetlands.

1 **TITLE I—AMENDMENTS TO THE** 2 **FEDERAL WATER POLLUTION** 3 **CONTROL ACT**

4 **SEC. 101. STATEMENT OF POLICY.**

5 Section 101(a) of the Federal Water Pollution Con-
6 trol Act (33 U.S.C. 1251(a)) is amended—

7 (1) in paragraph (6), by striking “and” at the
8 end;

9 (2) in paragraph (7), by striking the period at
10 the end and inserting “; and”; and

11 (3) by adding at the end the following new
12 paragraph:

13 “(8) it is the national policy to preserve the
14 quantity and quality of the wetlands of the United

1 States and to restore those wetlands that have been
2 degraded.”.

3 **SEC. 102. EXPANSION OF SCOPE OF PERMIT PROGRAM.**

4 (a) PROHIBITION OF ACTIVITIES.—Subsection (a) of
5 section 301 of the Federal Water Pollution Control Act
6 (33 U.S.C. 1311(a)) is amended to read as follows:

7 “(a) Except as in compliance with this section and
8 sections 302, 306, 307, 318, 402, and 404, the discharge
9 of any pollutant or other alteration of navigable waters
10 by any person shall be unlawful.”.

11 (b) CERTIFICATION.—The first sentence of section
12 401(a) of such Act (33 U.S.C. 1341(a)) is amended to
13 read as follows: “Any applicant for a Federal license or
14 permit to conduct any activity, including the construction
15 or operation of a facility, that may result in any discharge
16 into or other alteration of navigable waters, shall provide
17 the licensing or permitting agency a certification from the
18 State where the activity occurs or will occur, or, if appro-
19 priate, from the interstate water pollution control agency
20 having jurisdiction over navigable waters where the activ-
21 ity occurs or will occur, that the activity will comply with
22 the applicable provisions of sections 301, 302, 303, 306,
23 and 307 and will allow for the protection, achievement,
24 and maintenance of designated uses included in applicable
25 water quality standards.”.

1 (c) ISSUANCE OF PERMITS.—The first sentence of
2 section 404(a) of such Act (33 U.S.C. 1344(a)) is amend-
3 ed by inserting before the period at the end the following:
4 “, or for any other alteration of navigable waters”.

5 (d) DEFINITION OF OTHER ALTERATION.—Section
6 502 of such Act (33 U.S.C. 1362) is amended by adding
7 at the end the following new paragraph:

8 “(21) The term ‘other alteration’ means the draining,
9 dredging, excavation, channelization, flooding, clearing of
10 vegetation, driving of a piling or placement of other ob-
11 struction, diversion of waters, or other activity in navi-
12 gable waters that impairs the flow, reach, or circulation
13 of surface waters, or that results in a more than minimal
14 change in the hydrologic regime, bottom contour, or con-
15 figuration of the waters, or in the type, distribution, or
16 diversity of vegetation, fish, and wildlife that depend on
17 the waters.”.

18 **SEC. 103. DEFINITION OF FILL MATERIAL.**

19 Section 404(d) of the Federal Water Pollution Con-
20 trol Act (33 U.S.C. 1344(d)) is amended—

21 (1) by inserting “(1)” after “(d)”; and

22 (2) by adding at the end the following new
23 paragraph:

24 “(2) As used in this section, the term ‘fill material’
25 means any pollutant that has the effect of replacing a por-

1 tion of navigable waters or changing the bottom elevation
2 or configuration of a water body.”.

3 **SEC. 104. PERMIT REVIEW BY RESOURCE AGENCIES.**

4 (a) REVIEW BY SECRETARY OF THE INTERIOR AND
5 SECRETARY OF COMMERCE.—Section 404(m) of the Fed-
6 eral Water Pollution Control Act (33 U.S.C. 1344(m)) is
7 amended—

8 (1) by striking “Service that” and inserting
9 “Service, and the Secretary of Commerce, acting
10 through the Assistant Administrator of the National
11 Marine Fisheries Service, that”; and

12 (2) by striking “Service, shall” and inserting
13 “Service, and the Secretary of Commerce, acting
14 through the Assistant Administrator of the National
15 Marine Fisheries Service, shall”.

16 (b) RESPONSE IN WRITING.—Section 404(m) of such
17 Act (33 U.S.C. 1344(m)) is amended by adding at the
18 end the following new sentence: “The Secretary shall
19 adopt the recommendations made in the comments or re-
20 spond in writing to the Secretary of the Interior or the
21 Secretary of Commerce, as appropriate, describing the
22 reasons of the Secretary for not adopting the rec-
23 ommendations and explaining how the determination of
24 the Secretary is consistent with the goals and purposes

1 of this Act and the guidelines developed under subsection
2 (b)(1).”.

3 **SEC. 105. CLARIFICATION OF GENERAL PERMIT PROGRAM.**

4 Paragraph (1) of section 404(e) of the Federal Water
5 Pollution Control Act (33 U.S.C. 1344(e)(1)) is amended
6 to read as follows:

7 “(1)(A)(i) In carrying out the functions of the Sec-
8 retary under this section relating to the discharge of
9 dredged or fill material or other alteration of navigable
10 waters, the Secretary may, after notice and opportunity
11 for public hearing, and with the concurrence of the Admin-
12 istrator, issue general permits on a State, multi-State, or
13 nationwide basis for any narrowly defined category of ac-
14 tivities involving discharges of dredged or fill material or
15 any other alteration of navigable waters if the Secretary
16 determines that the activities in the category—

17 “(I) are similar in nature;

18 “(II) will cause only minimal adverse environ-
19 mental effects when performed separately; and

20 “(III) will have only minimal cumulative ad-
21 verse effect on the environment.

22 “(ii) Any general permit issued under this subsection
23 shall—

24 “(I) be consistent with the goals and purposes
25 of this Act;

1 “(II) be based on the guidelines described in
2 subsection (b)(1);

3 “(III) set forth the requirements and standards
4 that shall apply to any activity authorized by the
5 general permit; and

6 “(IV) include adequate measures to enable the
7 Secretary to be apprised of, and to monitor activities
8 conducted pursuant to, the general permit.

9 “(B) Before any activity is authorized under a gen-
10 eral permit issued under this subsection for which
11 predischARGE notification is required pursuant to regula-
12 tions, the Secretary shall give notice and opportunity to
13 comment, for a 30-day period beginning on the date of
14 the notice, to—

15 “(i) the Administrator;

16 “(ii) the Secretary of the Interior;

17 “(iii) the Secretary of Commerce;

18 “(iv) the appropriate officials of State agencies
19 responsible for water quality, fish, and wildlife re-
20 sources that may be affected by the activity; and

21 “(v) the public.

22 “(C) No activity shall be authorized under a general
23 permit issued under this subsection within a State that
24 has denied or revoked water quality certification pursuant
25 to section 401 for the activities under the general permit.

1 “(D) Each general permit issued under this sub-
 2 section shall be reviewed by the Secretary biennially. In
 3 conducting the review, the Secretary shall take into ac-
 4 count the information contained in reports required by
 5 subsection (u), and shall, after notice and hearing, revise
 6 or revoke the permit as necessary to avoid or minimize
 7 cumulative adverse effects on navigable waters.”.

8 **SEC. 106. REPORTS ON EFFECTS OF PERMIT PROGRAM ON**
 9 **WETLANDS.**

10 Section 404 of the Federal Water Pollution Control
 11 Act (33 U.S.C. 1344) is amended by adding at the end
 12 the following new subsection:

13 “(u) REPORTS ON PERMIT PROGRAM.—

14 “(1) EFFECTS OF PERMITTED ACTIVITIES.—

15 “(A) IN GENERAL.—The Secretary, in con-
 16 sultation with the Administrator, the Secretary
 17 of the Interior, and those States that have a
 18 permit program approved under subsection
 19 (h)(2), shall report biennially to Congress on
 20 the effects on navigable waters of activities con-
 21 ducted under permits issued under this section,
 22 including general permits. The reports shall
 23 contain estimates of the acreage and functions
 24 of navigable waters affected by each general
 25 permit, in order to determine whether the indi-

1 vidual and cumulative adverse environmental ef-
2 fects of activities authorized by each general
3 permit are minimal.

4 “(B) MONITORING.—For purposes of pre-
5 paring reports under this subsection, the Sec-
6 retary, the Administrator, and the Secretary of
7 the Interior shall jointly monitor the achieve-
8 ment of the policy stated in section 101(a)(8)
9 under permits issued under this section.

10 “(C) CONTENT OF REPORTS.—The reports
11 submitted to Congress under this subsection
12 shall include consideration of relevant informa-
13 tion contained in individual and general permit
14 applications, compliance monitoring records and
15 maps, and any other relevant information.

16 “(2) EFFECTS OF COMPENSATORY MITIGA-
17 TION.—

18 “(A) IN GENERAL.—The Secretary, in con-
19 sultation with the Administrator, the Secretary
20 of the Interior, and those States that have a
21 permit program approved under subsection
22 (h)(2), shall report biennially to Congress on
23 the effects on navigable waters of compensatory
24 mitigation required under permits issued under
25 this section, including general permits.

1 “(B) CONTENTS OF REPORTS.—The re-
2 ports shall contain—

3 “(i) estimates of the number of per-
4 mits for which compensatory mitigation is
5 required; and

6 “(ii) a description of—

7 “(I) the type and extent of com-
8 pensatory mitigation projects re-
9 quired;

10 “(II) the degree of compliance
11 with the compensatory mitigation re-
12 quirements;

13 “(III) the extent to which the
14 compensatory mitigation requirements
15 have been successful in restoring the
16 intended range of functions and val-
17 ues to navigable waters; and

18 “(IV) the extent to which mon-
19 itoring and enforcement of compen-
20 satory mitigation requirements have
21 been conducted by the agencies re-
22 sponsible for the monitoring and en-
23 forcement.”.

1 **SEC. 107. EXPEDITED PERMIT REVIEW.**

2 Subsection (q) of section 404 of the Federal Water
3 Pollution Control Act (33 U.S.C. 1344(q)) is amended to
4 read as follows:

5 “(q) REDUCTION IN PAPERWORK AND DELAYS.—

6 “(1) IN GENERAL.—Not later than 180 days
7 after the date of enactment of this paragraph, the
8 Secretary shall enter into an agreement with the Ad-
9 ministrator, the Secretaries of Agriculture, Com-
10 merce, and the Interior, and the heads of other ap-
11 propriate Federal agencies to minimize, to the maxi-
12 mum extent practicable, duplication, needless paper-
13 work, and delays in the issuance of permits under
14 this section.

15 “(2) FAST TRACK FOR MINOR PERMITS.—

16 “(A) IN GENERAL.—Not later than 180
17 days after the date of enactment of this para-
18 graph, the Secretary shall establish in each dis-
19 trict office a special team, to be known as the
20 ‘Fast Track team’, to expedite the review and
21 processing of minor permits. Each team shall
22 consist of not more than 25 percent of all per-
23 sonnel assigned to review permit applications
24 under this section, and shall not be assigned to
25 review or process any permits other than minor
26 permits, unless final decisions have been

1 reached with respect to all minor permits by not
2 later than 60 days after the notice of applica-
3 tion for the permits is published pursuant to
4 subsection (a).

5 “(B) REVIEW.—The District Engineer in
6 each district office shall review the operations
7 of the Fast Track team in the office every 180
8 days. If final decisions on a significant percent-
9 age of minor permits have not been reached by
10 not later than 60 days after the notice of appli-
11 cation for the permits is published pursuant to
12 subsection (a), additional personnel shall be as-
13 signed to the Fast Track team.

14 “(C) DEFINITION OF MINOR PERMIT.—As
15 used in this subsection, the term ‘minor per-
16 mit’—

17 “(i) means a permit for an activity
18 that—

19 “(I) would disturb not more than
20 1 acre of wetlands;

21 “(II) is not part of a larger com-
22 mon plan or proposal that would dis-
23 turb acreage in addition to that speci-
24 fied in subclause (I); and

1 “(III) is being performed by an
2 individual or a private business that
3 employs not more than 10 people; and
4 “(ii) does not include a permit—

5 “(I) with respect to which the
6 Secretary is required to issue an envi-
7 ronmental impact statement under the
8 National Environmental Policy Act of
9 1969 (42 U.S.C. 4321 et seq.);

10 “(II) that involves an activity
11 that may affect any species that is
12 listed as an endangered species or
13 threatened species under the Endan-
14 gered Species Act of 1973 (16 U.S.C.
15 1531 et seq.), or the habitat of the
16 species; or

17 “(III) with respect to which the
18 Secretary, the Administrator, or a
19 Federal agency referred to in para-
20 graph (1) requests that the permit ap-
21 plication receive additional review.”.

22 **SEC. 108. AVOIDANCE AND MINIMIZATION OF ADVERSE EF-**
23 **FECTS.**

24 Section 404 of the Federal Water Pollution Control
25 Act (33 U.S.C. 1344) (as amended by section 106) is fur-

1 ther amended by adding at the end the following new sub-
 2 section:

3 “(v) MINIMIZATION OF ADVERSE ENVIRONMENTAL
 4 IMPACTS.—No individual or general permit shall be issued
 5 for an activity pursuant to this section if there is a prac-
 6 ticable alternative to the proposed activity that would have
 7 less adverse environmental impact on navigable waters.”.

8 **SEC. 109. EXEMPTIONS FOR AGRICULTURE AND OTHER AC-**
 9 **TIVITIES.**

10 Subsection (f) of section 404 of the Federal Water
 11 Pollution Control Act (33 U.S.C. 1344(f)) is amended to
 12 read as follows:

13 “(f) EXEMPTIONS FOR AGRICULTURE AND OTHER
 14 ACTIVITIES.—

15 “(1) IN GENERAL.—

16 “(A) GENERAL RULE.—Except as provided
 17 in paragraph (2), the discharge of dredged or
 18 fill material into or any other alteration of navi-
 19 gable waters described in subparagraph (B) is
 20 not prohibited by, or otherwise subject to, regu-
 21 lation under this section or section 301(a) or
 22 402 (except for effluent standards or prohibi-
 23 tions under section 307).

24 “(B) ACTIVITIES.—The discharge of
 25 dredged or fill material into or any other alter-

1 ation of navigable waters referred to in sub-
2 paragraph (A) is a discharge or other alter-
3 ation—

4 “(i) from a normal farming,
5 silviculture, or ranching activity, including
6 plowing, seeding, cultivating, minor drain-
7 age, harvesting for the production of food,
8 fiber, and forest products, or an upland
9 soil or water conservation practice;

10 “(ii) for the purpose of the mainte-
11 nance, including the emergency reconstruc-
12 tion of a recently damaged part, of a then
13 currently serviceable structure, including a
14 dike, dam, levee, groin, riprap, breakwater,
15 causeway, bridge abutment or approach, or
16 a transportation structure, to the then cur-
17 rent or most recent configuration;

18 “(iii) for the purpose of the construc-
19 tion or maintenance of a farm or stock
20 pond or irrigation ditch, or the mainte-
21 nance of a drainage ditch;

22 “(iv) for the purpose of the construc-
23 tion of a temporary sedimentation basin on
24 a construction site that does not involve

1 the placement of fill material into navi-
2 gable waters;

3 “(v) for the purpose of the construc-
4 tion or maintenance of a farm road or for-
5 est road, or a temporary road for moving
6 mining equipment, if the road is con-
7 structed and maintained, in accordance
8 with best management practices, to ensure
9 that—

10 “(I) the flow and circulation pat-
11 terns and chemical and biological
12 characteristics of navigable waters are
13 not impaired;

14 “(II) the reach of navigable wa-
15 ters is not reduced; and

16 “(III) any adverse effect on the
17 aquatic environment will otherwise be
18 minimized; or

19 “(vi) resulting from any activity with
20 respect to which a State has an approved
21 program under section 208(b)(4) that
22 meets the requirements of subparagraphs
23 (B) and (C) of such section.

24 “(2) EXCEPTION FOR NEW USES.—Any dis-
25 charge of dredged or fill material into, or other al-

1 teration of, navigable waters incidental to any activ-
2 ity having as the purpose of the activity the bringing
3 of an area of navigable waters into a use to which
4 the area was not previously subject, if the flow or
5 circulation of navigable waters may be impaired or
6 the reach of the waters may be reduced, shall be re-
7 quired to have a permit under this section.

8 “(3) OTHER ACTIVITIES.—An activity that does
9 not result in the discharge of dredged or fill material
10 into, or any other alteration of, navigable waters
11 shall not be prohibited or otherwise subject to regu-
12 lation under this section.

13 “(4) NAVIGABLE WATERS.—

14 “(A) IN GENERAL.—For purposes of this
15 section, the following shall not be considered to
16 be navigable waters:

17 “(i) Nontidal drainage and irrigation
18 ditches excavated in uplands.

19 “(ii) Artificially irrigated areas that
20 would revert to uplands if the irrigation
21 ceased.

22 “(iii) Artificial lakes or ponds created
23 by excavating or diking uplands to collect
24 and retain water, and that are used exclu-

1 sively for stock watering, irrigation, or rice
2 growing.

3 “(iv) Artificial reflecting or swimming
4 pools or other small ornamental water bod-
5 ies created by excavating or diking uplands
6 to retain water for primarily aesthetic rea-
7 sons.

8 “(v) Waterfilled depressions created in
9 uplands incidental to construction activity
10 and pits excavated in uplands for the pur-
11 pose of obtaining fill, sand, or gravel, un-
12 less and until the construction or exca-
13 vation operation is abandoned and the re-
14 sulting water body meets the definition of
15 waters of the United States.

16 “(B) BURDEN OF DEMONSTRATION.—Sub-
17 paragraph (A) shall not apply to a particular
18 water body unless the person desiring to con-
19 duct an activity in the water body is able to
20 demonstrate that the water body qualifies under
21 subparagraph (A) for exemption from regula-
22 tion under this section.

23 “(5) CONTINUING FARMING ACTIVITIES.—Ex-
24 cept as provided in paragraph (2), normal plowing,
25 seeding, cultivating, minor drainage for crop produc-

1 tion, or harvesting shall not be prohibited or other-
 2 wise subject to regulation under this section in wa-
 3 ters of the United States that have been maintained
 4 as cropland for at least 1 growing season in the 5-
 5 year period prior to the plowing, seeding, cultivating,
 6 minor drainage, or harvesting.”.

7 **SEC. 110. CITIZEN SUITS AMENDMENTS.**

8 Section 505 of the Federal Water Pollution Control
 9 Act (33 U.S.C. 1365) is amended—

10 (1) in subsection (a)—

11 (A) in paragraph (1)(B) of the first sen-
 12 tence, by inserting after “Administrator” the
 13 following: “, the Secretary of the Army,”;

14 (B) in paragraph (2) of the first sentence,
 15 and in the second sentence, by inserting after
 16 “Administrator” each place it appears the fol-
 17 lowing: “or the Secretary of the Army”; and

18 (C) in the second sentence, by striking
 19 “section 309(d)” and inserting “sections 309(d)
 20 and 404(s)”;

21 (2) in subsection (b)—

22 (A) in paragraph (1)—

23 (i) in subparagraph (A), by striking
 24 “and (iii)” and inserting the following:

25 “(iii) to the Secretary of the Army (if the

1 alleged violation is under section 404), and
2 (iv)”; and

3 (ii) in subparagraph (B), by inserting
4 after “if the Administrator” the following:
5 “, Secretary of the Army,”; and

6 (B) in paragraph (2), by inserting after
7 “to the Administrator” the following: “or the
8 Secretary of the Army”;

9 (3) in subsection (c)—

10 (A) in paragraph (2), by inserting after
11 “the Administrator” the following: “(and the
12 Secretary of the Army, if the alleged violation
13 is under section 404)”; and

14 (B) in paragraph (3), by inserting after
15 “Attorney General” both places it appears the
16 following: “, the Secretary of the Army (if the
17 alleged violation is under section 404),”;

18 (4) in subsection (e), by inserting after “Ad-
19 ministrator” the following: “, the Secretary of the
20 Army,”;

21 (5) in subsection (f), by striking “or (7)” and
22 inserting the following: “(7) a permit or condition of
23 a permit issued under section 404, that has been, or
24 is, in effect under this Act (including a requirement
25 applicable by reason of section 313); or (8)”; and

(6) in subsection (h), by inserting after “Administrator” both places it appears the following:
“or the Secretary of the Army”;

TITLE II—IMPROVED WETLANDS PERMITTING; REVISIONS TO WETLANDS DELINEATION PROCEDURES

SEC. 201. IMPROVEMENT OF ADMINISTRATION OF WET- LANDS PERMITTING.

(a) NEEDS ANALYSIS.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress an analysis of the needs of the Army Corps of Engineers and the Environmental Protection Agency for additional personnel, administrative resources, and funding to improve the implementation of section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344).

(2) CONTENTS.—The analysis submitted under this subsection shall—

(A) give particular emphasis to the needs of the Army Corps of Engineers and the Environmental Protection Agency with respect to

1 improving and expediting wetlands delineation
2 and wetlands permitting generally;

3 (B) include recommendations regarding
4 additional appropriations necessary for the im-
5 provement and expedition referred to in sub-
6 paragraph (A); and

7 (C) identify the Army Corps of Engineers
8 district offices and Environmental Protection
9 Agency regional offices that have the greatest
10 need for the additional appropriations referred
11 to in subparagraph (C).

12 (b) USE OF FUNDS FOR WETLANDS AND EDU-
13 CATION.—Section 404 of the Federal Water Pollution
14 Control Act (33 U.S.C. 1344) (as amended by section
15 108) is further amended by adding at the end the follow-
16 ing new subsection:

17 “(w) USE OF FUNDS FOR WETLANDS AND EDU-
18 CATION.—

19 “(1) IN GENERAL.—For each fiscal year begin-
20 ning after the date of enactment of this subsection,
21 of amounts made available to carry out this sec-
22 tion—

23 “(A) to the Army Corps of Engineers, the
24 Secretary shall use such amounts as are nec-
25 essary to carry out the program for training

1 and certification of individuals as wetlands de-
2 lineators authorized by section 307(e) of the
3 Water Resources Development Act of 1990 (33
4 U.S.C. 2317(e));

5 “(B) to the Army Corps of Engineers or
6 the Environmental Protection Agency, the Sec-
7 retary or the Administrator, respectively, shall
8 use such amounts as are necessary to improve
9 such education and outreach programs of the
10 Army Corps of Engineers or the Environmental
11 Protection Agency as are in existence on the
12 date of the use of the funds, with respect to the
13 requirements of this section; and

14 “(C) to the Secretary, the Secretary shall
15 use, in accordance with paragraph (2), such
16 amounts as are necessary, but not to exceed
17 \$5,000,000, to assist landowners who lack the
18 financial capacity to perform the wetlands de-
19 lineations necessary to apply for permits under
20 this section.

21 “(2) WETLANDS DELINEATIONS ASSISTANCE.—

22 The Secretary may provide the assistance described
23 in paragraph (1)(C) by providing technical assist-
24 ance or by performing delineations. Not later than
25 180 days after the date of enactment of this sub-

1 section, the Secretary shall issue regulations specify-
2 ing which landowners are eligible for the assist-
3 ance.”.

4 (c) FUNDING FOR EXPEDITING AND COMPLETING
5 WETLANDS MAPPING.—

6 (1) COMPLETION OF MAPPING.—For each fiscal
7 year beginning after the date of enactment of this
8 Act, of amounts appropriated for programs of the
9 United States Fish and Wildlife Service, the Direc-
10 tor of the United States Fish and Wildlife Service
11 shall use—

12 (A) such amounts as are necessary to com-
13 plete the wetland mapping program of the Serv-
14 ice, in existence on the date of enactment of
15 this Act, by not later than 1 year after the date
16 of enactment of this Act;

17 (B) such amounts (in addition to amounts
18 used pursuant to subparagraphs (A) and (C))
19 as are necessary to conduct mapping under the
20 program referred to in subparagraph (A) in
21 areas where there is the potential for delineat-
22 ing particularly large areas of wetlands; and

23 (C) such amounts as are necessary (in ad-
24 dition to amounts used pursuant to subpara-
25 graphs (A) and (B)) to delineate wetlands

1 under the program referred to in subparagraph
2 (A) in watersheds and ecosystems for which the
3 need for delineation is particularly acute, in-
4 cluding where wetlands are particularly difficult
5 to identify or where pressure for the develop-
6 ment of wetlands is intense, by as soon as prac-
7 ticable after the date of enactment of this Act.

8 (2) UPDATING MAPS.—The Director of the
9 United States Fish and Wildlife Service shall update
10 each map prepared under the wetlands mapping pro-
11 gram referred to in paragraph (1)(A) at least once—

12 (A) in the 15-year period beginning on the
13 date of the completion of the map; and

14 (B) in each 15-year period thereafter.

15 **SEC. 202. REVISIONS TO FEDERAL WETLANDS DELINEA-**
16 **TION PROCEDURES.**

17 Beginning on the day after the date of enactment of
18 this Act, no revision to or clarification of any Federal
19 manual for identifying and delineating jurisdictional wet-
20 lands shall be adopted, and no guidance or regulation re-
21 lated to the definition, delineation, or identification of wet-
22 lands shall be issued, until the National Academy of
23 Sciences has completed the study of wetlands authorized
24 under the Departments of Veterans Affairs and Housing
25 and Urban Development, and Independent Agencies Ap-

1 appropriations Act, 1993 (Public Law 102–389). All revi-
2 sions made after the date of completion of the study to
3 any Federal manual for the identification and delineation
4 of wetlands shall take into consideration the scientific and
5 technical recommendations of the National Academy of
6 Sciences.

7 **TITLE III—WETLANDS**

8 **RESTORATION PROGRAM**

9 **SEC. 301. WETLANDS RESTORATION PILOT PROGRAM.**

10 (a) IN GENERAL.—The Secretary of the Army, in co-
11 operation with the Administrator of the Environmental
12 Protection Agency, the Director of the United States Fish
13 and Wildlife Service, and appropriate officials of State and
14 local government entities, shall establish, with opportunity
15 for public notice and comment, a pilot program of wet-
16 lands restoration.

17 (b) PURPOSES.—The purposes of the pilot program
18 established under subsection (a) are—

19 (1) to identify areas where the restoration of
20 significant wetland acreage and functions, including
21 fish and wildlife habitat, water quality protection,
22 and natural hydrologic functions, could contribute
23 substantially to preserving the quantity and quality
24 of the wetlands of the United States;

1 (2) to test methods and techniques for wetlands
2 restoration in the areas described in paragraph (1),
3 and in areas previously identified as suitable for res-
4 toration; and

5 (3) to develop a means of evaluating the success
6 over the long term of the wetlands restoration ef-
7 forts described in paragraph (2).

8 **SEC. 302. SENSE OF CONGRESS CONCERNING WETLANDS**
9 **RESERVE PROGRAM.**

10 It is the sense of Congress that the wetlands reserve
11 program authorized by subchapter C of chapter 1 of sub-
12 title D of title XII of the Food Security Act of 1985 (16
13 U.S.C. 3837 et seq.) is an effective wetlands conservation
14 and restoration program that has the potential to benefit
15 agriculturalists, rural communities, and the wetlands re-
16 source base of the United States. Further, it is the sense
17 of Congress that the wetlands reserve program should be
18 fully funded to achieve the acreage enrollment goals of the
19 program, and should be actively promoted by the Depart-
20 ment of Agriculture to achieve full subscription.

21 **TITLE IV—TAX INCENTIVES FOR**
22 **WETLANDS CONSERVATION**

23 **SEC. 401. WETLANDS STEWARDSHIP TRUSTS.**

24 (a) DESIGNATION.—The Secretary of the Interior
25 shall designate a nonprofit organization to be a Wetlands

1 Stewardship Trust for purposes of this section if the orga-
2 nization—

3 (1) includes among the primary purposes of the
4 organization the acquisition of private interests in
5 wetlands, former wetlands, and associated real prop-
6 erty for the purpose of restoring or preserving the
7 property; and

8 (2) meets such other requirements as may be
9 established in regulations issued under subsection
10 (c).

11 (b) APPLICATION.—A nonprofit organization seeking
12 to be designated a Wetlands Stewardship Trust for pur-
13 poses of this section may submit to the Secretary of the
14 Interior an application for the designation, in accordance
15 with procedures established in regulations issued under
16 subsection (c).

17 (c) REGULATIONS.—Not later than 180 days after
18 the date of enactment of this Act, the Secretary of the
19 Interior, acting through the Director of the United States
20 Fish and Wildlife Service, in consultation with the Sec-
21 retary of the Army, acting through the Army Corps of En-
22 gineers, and the Administrator of the Environmental Pro-
23 tection Agency shall issue regulations establishing require-
24 ments for being designated a Wetlands Stewardship Trust
25 under this section.

1 **SEC. 402. TAX TREATMENT OF DONATIONS OF WETLANDS.**

2 (a) TAX TREATMENT.—Subsection (e) of section 170
3 of the Internal Revenue Code of 1986 (relating to chari-
4 table, etc., contributions and gifts) is amended by adding
5 at the end the following new paragraph:

6 “(6) SPECIAL RULES FOR CONTRIBUTIONS OF
7 WETLANDS.—

8 “(A) IN GENERAL.—In the case of a chari-
9 table contribution by a taxpayer of wetlands (or
10 any interest in wetlands) to a Wetlands Stew-
11 ardship Trust or to a governmental unit re-
12 ferred to in subsection (c)(1) for the purpose of
13 preserving the property in its natural state:

14 “(i) 50 PERCENT LIMITATION TO
15 APPLY TO INDIVIDUALS.—Such a contribu-
16 tion by an individual shall be treated for
17 purposes of this section as described in
18 subsection (b)(1)(A).

19 “(ii) 20-YEAR CARRYFORWARD.—Sub-
20 section (d)(1) shall be applied by substitut-
21 ing ‘20 years’ for ‘5 years’ each place it
22 appears and with appropriate adjustments
23 in the application of subparagraphs (A)(ii)
24 and (B)(ii) of such subsection.

25 “(iii) EXTENSION OF PERIOD FOR EX-
26 CHANGES.—If the contribution is made as

1 part of an exchange to which section 1031
2 applies, paragraph (3) of section 1031(a)
3 shall be treated as met if the property to
4 be received in the exchange is received by
5 the taxpayer not later than the date which
6 is 3 years after the date on which the tax-
7 payer transfers the property relinquished
8 in the exchange.

9 “(B) PROPERTY MUST BE PROTECTED IN
10 PERPETUITY.—A contribution shall not be
11 treated as for the purpose referred to in sub-
12 paragraph (A) unless the purpose is protected
13 in perpetuity.

14 “(C) CERTAIN PROPERTY INELIGIBLE.—
15 Subparagraph (A) shall not apply to any con-
16 tribution of property if—

17 “(i) the property is required (as of the
18 date of the contribution) to be preserved in
19 perpetuity in its natural state other than
20 by reason of the terms of contribution; or

21 “(ii) the property is required to be re-
22 stored or preserved as compensatory miti-
23 gation as a condition of a permit issued
24 under section 404 of the Federal Water
25 Pollution Control Act (33 U.S.C. 1344).

“(D) UNUSED DEDUCTION CARRYOVER ALLOWED ON TAXPAYER’S LAST RETURN.—In the case of an individual, if—

“(i) the taxpayer dies before the close of the last taxable year for which a deduction for a contribution to which subparagraph (A) applies could have been allowed under subsection (d)(1), and

“(ii) any portion of the deduction for the contribution has not been allowed for any taxable year before the taxable year in which the death occurs,

the portion shall be allowed as a deduction under subsection (a) for the taxable year in which the death occurs without regard to subsection (b), or the unused portion may be used against the estate taxes of the taxpayer.

“(E) DEFINITIONS.—As used in this paragraph:

“(i) WETLANDS.—The term ‘wetlands’ means any area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and which under normal circumstances does support, a prevalence of

1 vegetation typically adapted for life in
2 saturated soil conditions.

3 “(ii) WETLANDS STEWARDSHIP
4 TRUST.—The term ‘Wetlands Stewardship
5 Trust’ means any entity designated by the
6 Secretary of the Interior under section 401
7 of the Wetlands Reform Act of 1993.”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to contributions and gifts made
10 after the date of enactment of this Act in taxable years
11 ending after the date.

12 **SEC. 403. EXCLUSION FROM GROSS INCOME FOR AMOUNTS**
13 **RECEIVED FROM COMPATIBLE USES OF WET-**
14 **LANDS.**

15 (a) IN GENERAL.—Part III of subchapter B of chap-
16 ter 1 of the Internal Revenue Code of 1986 (relating to
17 items specifically excluded from gross income) is amend-
18 ed—

19 (1) by redesignating section 137 as section 138;

20 and

21 (2) by inserting after section 136 the following
22 new section:

1 **“SEC. 137. INCOME FROM COMPATIBLE USES OF WET-**
2 **LANDS.**

3 “(a) GENERAL RULE.—Gross income shall not in-
4 clude any amount received by the owner of wetlands for
5 allowing any person to use the wetlands in a compatible
6 use.

7 “(b) DEFINITIONS.—As used in this section:

8 “(1) COMPATIBLE USE.—The term ‘compatible
9 use’ has the meaning given the term in the regula-
10 tions prescribed under the following sentence. The
11 Secretary of the Interior, acting through the Direc-
12 tor of the United States Fish and Wildlife Service,
13 shall prescribe regulations identifying those activities
14 which constitute compatible uses for purposes of this
15 section, including any pertinent restrictions on the
16 activities. The activities may include fishing, hunt-
17 ing, and occasional and prudent managed haying, if
18 deemed appropriate by the Secretary of the Interior,
19 but shall not include any activity which degrades the
20 functions or values of wetlands.

21 “(2) WETLANDS.—The term ‘wetlands’ has the
22 meaning given the term by section 170(e)(6)(E)(i).”.

23 (b) CLERICAL AMENDMENT.—The table of sections
24 for such part III is amended by striking the last item and
25 inserting the following new items:

“Sec. 137. Income from compatible uses of wetlands.

“Sec. 138. Cross references to other Acts.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to amounts received after the date
3 of enactment of this Act in taxable years ending after the
4 date.

○

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S 1195 IS——3